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D.H. Petitioner, v. DISTRICT OF COLUMBIA DEPARTMENT ON DISABILITY SERVICES & REHABILITATION SERVICES ADMINISTRATION Respondent	Case No.: 2011-DDS-00014

FINAL ORDER

I. Introduction

In this case, Petitioner D.H. seeks relief from this administrative court with regard to the Rehabilitation Services ("RSA") program. A motions hearing was held on November 3, 2011, as to the three remaining issues.

For the following reasons, I conclude that there are no disputes of material fact, and the parties are entitled to summary decision in their respective favors as to all three remaining issues:

(1) **IPE FOR ONE SEMESTER –** Under the facts of this case, Respondent has not violated Mr. H.'s rights under the Rehabilitation Services Act (the "Act"), by offering Mr. H. an individualized plan for employment ("IPE") for only the Fall 2011 semester.

There is no provision in the Act that specifies the time period for an IPE to be issued. Respondent is not entitled to substantial deference to its new procedure for shortened time periods for issuing an IPE, primarily because the new procedure is not written and is not codified in Respondent's regulations or policy manual. However, I must uphold the new procedure, as applied in this case, because the procedure can be consistent with Respondent's mandates to provide services to Mr. H. under the Act. Nonetheless, there is a potential for serious disruption of Mr. H.'s educational program.

At this point, Mr. H. has not shown that Respondent's actions have placed an undue hardship upon him. If Mr. H. faces harm, he may file another timely hearing request;

(2) **LACK OF PROPER NOTICE -** Although Respondent has failed to provide timely and adequate notice of its actions with regard to Mr. H.'s RSA application for the Fall 2011 Semester, Mr. H. was not prejudiced by this failure, and no remedy can be ordered; and

(3) **TRANSPORTATION COSTS -** Respondent has properly determined that it will provide bus fare, and not air fare, as transportation costs to Mr. H. to travel from Ball State University to his home, at the end of the 2011-12 school year. However, Respondent must also provide transportation costs for Mr. H. to go home and then return to Ball State University during the semester break, when Mr. H. cannot remain in his resident housing, and Respondent must reimburse the bus fare cost of Mr. H.'s travel to Ball State University in August 2011.

II. Procedural History

On September 28, 2011, Petitioner D. H. through counsel, requested a hearing regarding the RSA program.

A status conference was held on October 18, 2011. Joseph R. Cooney, Esq., appeared on behalf of Mr. H. Shakira D. Pleasant, Esq., appeared on behalf of Respondent. J.H., Mr. H.'s mother; Jessica Okanlawon, Vocational Rehabilitation Specialist; and Dexel Tolliver, Supervisory Vocational Rehabilitation Specialist, all attended the status conference.

The parties defined three issues for hearing,[1] which I will discuss in the Analysis section of this Order. The parties also agreed to schedule the filing of cross-motions for summary adjudication, and a hearing on the cross-motions for November 3, 2011. On October 20, 2011, I issued an Order on Motions, setting forth these procedures.

Both parties timely filed cross-motions for summary adjudication.

The motions hearing was held as scheduled on November 3, 2011. Mr. Cooney appeared and presented argument on behalf of Mr. H. Ms. Pleasant appeared and presented argument on behalf of Respondent.

Both parties requested an opportunity to supplement the record in support of their respective cross-motions. Both parties also agreed to schedule an evidentiary hearing, in case the ruling on the motion did not dispose of all issues.

[1] The parties resolved a fourth issue, as Respondent has agreed to pay Mr. H.'s room and board for his freshman year at Ball State University.

On November 3, 2011, I issued an Order After Motions Hearing, that: (1) left the record open until November 10, 2011; and (2) scheduled an evidentiary hearing for November 15, 2011 at 9:00 AM.

On November 10, 2011, Respondent filed its Agency's Praecipe, with an Amended Declaration of Ms. Tolliver, and additional documents. As of November 10, 2011, Mr. H. had not filed any additional submissions.

On November 14, 2011, I issued an Interim Order, cancelling the evidentiary hearing scheduled for November 15, 2011. At the time I issued this Order, I had not received Respondent's November 10, 2011 submission. Since Respondent has clarified its position regarding transportation costs, this Order has redefined that issue, as I will discuss later.

In the next section, I will first discuss the standard for summary adjudication. Then I will make findings of undisputed material facts. Finally, I will analyze the parties' arguments as to the three issues and make conclusions of law.

Since the duration of the IPE is by far the most significant and difficult issue, I will discuss this issue first and in some detail.

III. Analysis and Conclusions of Law

A. Standard for Summary Adjudication

OAH Rule 2801.1 provides that where a procedural issue is not specifically addressed in the OAH Rules of Procedure, an administrative law judge may be guided by the District of Columbia Superior Court Rules of Civil Procedure.

Each party has moved for a decision in their respective favor, under OAH Rule 2819. In support of the respective motions, each party has also relied upon documents that are outside the scope of the pleadings. Therefore, it is more appropriate to consider the motions as akin to a motion for summary judgment or summary adjudication, than a motion for dismissal. *Compare* D.C. Superior Court Rules 12-I(k) and 56 [summary judgment] *with* D.C. Superior Court Rule 12(b)(6) [dismissal for failure to state a claim].

Under Rule 56, the burden is on the moving party to show: (1) that there are no issues of material fact; and (2) that the moving party is entitled to judgment as a matter of law. *See, e.g., Kissi v. Hardesty,* 3 A.3d 1125, 1128 (D.C. 2010).

In this case, I must grant summary adjudication in favor of both parties as to certain issues. Consequently, I will make findings of fact after construing all ambiguities in favor of the party against whom summary adjudication is granted.

B. Undisputed Facts

Mr. H. is a District resident and has a disability. He has applied for and been granted eligibility for RSA services. His vocational goal is sports management. He is attending Ball State University in Muncie, Indiana, as a freshman.

Although Towson State University in Towson, Maryland, offers a sports management program, Respondent has agreed to provide RSA services to Mr. H. through the program at Ball State. Towson, Maryland, is located north of Baltimore, Maryland.

Respondent has offered to Mr. H. an IPE for the Fall 2011 Semester only. Mr. H. has not signed this IPE. As of the motions hearing on November 3, 2011, Respondent's refusal to

obligate itself to pay for Mr. H.'s Spring 2012 Semester educational program has not prevented Mr. H. from enrolling at Ball State or receiving any related services. Ball State posts its spring schedule each November 14, and the Fall grades each December 19. Therefore, Mr. H. can enroll in a Spring schedule of classes and access his Fall grades in time for Respondent to develop a new IPE for the Spring semester.

Initially, Respondent refused to pay Mr. H.'s room and board expenses at Ball State. Respondent now agrees to pay these expenses for the freshman year only, because of special circumstances: Ball State requires all freshmen to live on campus.

On October 24, 2011, Mr. H., through his mother, J.H., requested that Respondent pay for the following transportation services: round-trip airfare between Washington, D.C. and Indianapolis, Indiana, at the beginning of the school year, during the Winter break, during the Thanksgiving break, during the Holiday break between semesters, during the spring break, and at the end of the school year.

Respondent, through its Vocational Rehabilitation Specialist, Jessica Okanlawon, and her supervisor, Dexel Tolliver, responded that it would only fund bus transportation, and only for a single one-way trip.

Ball State does not allow students to remain in student housing during the Holiday semester break.

Respondent has not issued any notices of action that adequately explained the reasons for its actions with regard to Mr. H.'s educational program, or of Mr. H.'s right to administrative

review or a hearing. Mr. H. was not prejudiced by the lack of notice, because he was able to request a hearing and he has not suffered any other loss related to the lack of notice.[2]

C. Respondent Has Not Violated Mr. H.'s Rights by Offering Single Semester IPE

1. The Standard of Review is Whether Respondent's Interpretation is Persuasive

Respondent contends that it is entitled to substantial deference as to its unwritten and unpublished policy of offering an IPE to a disabled client for only one semester, rather than one year. Prior to the recent past, Respondent has employed a practice of offering an IPE for one full year. Respondent argues that its new policy interprets the Act, which is ambiguous. *See Chevron USA, Inc. v. Natural Resource Defense Council, Inc.*, 467 U.S. 837 (1984); *Mallof v. D.C. Bd. of Elections & Ethics*, 1 A.3d 383, 393 (D.C. 2010) [District standard of "substantial deference" based on *Chevron*]. I disagree.

In *Chevron*, the U.S. Supreme Court held that courts reviewing an agency's interpretive ruling on the meaning of an ambiguous statute will grant substantial deference to the agency's interpretation, if it is reasonable. *Id. at* 865.

The analysis requires the reviewing court to determine: (1) whether the agency has authority to implement the statute; (2) whether the legislature has spoken to the issue in question; and (3) if the legislature has been silent, whether the agency's interpretation is reasonable.

[2] The record does not show when Mr. H. applied for RSA services, and so I cannot find this fact. From the discussion at the motions hearing, it appears to have been in August 2011 or before that month. Respondent has conceded that notice was inadequate, and so there is no dispute as to this fact.

In *United States v. Mead Corp.,* 533 U.S. 218, 229-30 (2001), the Supreme Court clarified that the courts will only accord substantial deference to regulations issued after notice and comment, and administrative adjudications issued after due process has been afforded. This limitation has been somewhat expanded to other types of administrative rulings.

The *Mead* court reasoned: "The weight [accorded to an administrative judgment] in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking the power to control." *Id. at* 228 [quoting *Skidmore v. Swift & Co.,* 325 U.S. 134, 140 (1944)].

Because the *Chevron* doctrine specifically applies to reviewing judicial courts, and since administrative adjudications are one of the possible conditions precedent to granting substantial deference, it is questionable whether an administrative adjudicator is required to apply the *Chevron* substantial deference to an agency interpretation. This would create a circular system, in which RSA demands substantial deference to its interpretation from OAH, and then later relies upon the OAH decision to give imprimatur to its interpretation. The question is more complicated here, because OAH is a central panel office not affiliated with the Department on Disability Services ("DDS") or RSA, and therefore OAH is closer to an independent court than an agency hearing office.

In the case of *Takahashi v. DHS,* 952 A.2d 869, 874 (2008), the D.C. Court of Appeals granted *Chevron* deference to RSA's policy of assigning responsibility to the D.C. Public Schools to identify disabled high school students who were entitled to receive transition services under the RSA program. This policy was reflected in an unpublished Memorandum of

Understanding ("MOU") among several agencies, including RSA. In *Takahashi*, there was an adjudication in favor of RSA's position. The adjudication was issued by OAH. The Court of Appeals specifically deferred to the administrative law judge's interpretation. *Id. at* 876.

While I question whether the *Chevron* doctrine applies to an OAH proceeding, I will assume for purposes of this discussion that the *Chevron* doctrine would apply, if appropriate. *Chevron* substantial deference is not appropriate in this case.

There is no dispute that the first two *Chevron* factors apply: (1) Respondent is authorized to administer the RSA program in the District of Columbia; D.C. Official Code §§ 7-761.01 *et seq.*; and (2) the Act is silent as to the issue presented: for what period of time must the IPE be issued?

The problem here is that this unwritten unpublished policy is not the type of interpretation that is entitled to substantial deference. Respondent has made a policy choice without giving notice and opportunity for comment, or codifying the policy choice within its regulations. As Mr. Cooney noted, Respondent amended its regulations in January 2011, and made no reference to the length of the IPE. Indeed, Respondent has not even included this policy in its Policy Manual provisions on the IPE. Respondent's Exhibit ("RX") 1. Further, the only adjudication on the matter, *SJG v. DDS*, OAH Case No. 2011-DDS-00008 (Final Order, August 11, 2011), was unfavorable to Respondent's position.

Finally, while the Act is silent on the specific issue here, the Act is very clear about Respondent's general obligations with regard to creating an IPE. I will discuss these requirements more fully in the next section.

For these reasons, Respondent is not entitled to substantial deference as to its interpretation that the Act authorizes the issuance of an IPE to Mr. H. for only one semester at a time. The standard of review, as enunciated in the *Mead* case, is whether Respondent's interpretation has the power to persuade.

This does not mean that there is no deference to Respondent's policy. It is not the role of this administrative court to create policy or even to offer alternatives to current policy. I will review Respondent's policy as to whether the policy is consistent with Respondent's obligations under the Act.

2. It is Possible for Respondent to Comply with the Act Under Its Policy

As noted above, the Act is silent as to the duration of the IPE. However, the Act contains very specific provisions concerning the purpose for the IPE, and the procedural and content requirements of the IPE. Since the federal regulations are more specific than the statutes, I will analyze the regulations.

Respondent must develop an IPE meeting the requirements of the Act and implement the IPE in a timely manner for each individual determined to be eligible for RSA services. 34 C.F.R. § 361.45(a)(1). Respondent must provide services pursuant to the IPE. § 361.45(a)(2).

The IPE must be designed to achieve a specific employment outcome that is selected by the individual, based on the individual's situation, and informed choice. § 361.45(b)(2).

Respondent contends that its decision to enter into an IPE for one semester at a time is consistent with § 361.45(d)(5), because the IPE must be "reviewed at least annually." Respondent contends that it is reviewing the IPE twice per year. Mr. H. counters that, instead,

Respondent is actually "amending" the IPE each semester without first having a specific change in circumstances, in violation of § 361.45(d)(6).

Despite the parties' positions, neither of these regulations addresses this specific issue, i.e., for what length of time must Respondent enter into an IPE? This is not a question of "review" or "amendment" of the IPE, but the actual duration of the IPE. The duration is very important because it defines the period for which Respondent is obligated to provide RSA services, regardless of whether the IPE is later reviewed or amended. As held in *Takahashi, supra*, 952 A.2d at 875, Respondent is not obligated to provide any services until it has entered into an IPE that specifically states this obligation.

Therefore, the more appropriate standard of review is whether Respondent is meeting its obligations to Mr. H., when it enters into a new IPE for each semester. The obligations include: offering informed choice, providing timely services, and supporting the vocational goal of the client, among others.

Respondent contends that entering into a semester-by-semester IPE promotes both the goal to review the IPE at least annually, and the goal to allow the individual to exercise informed choice. By forcing the parties to meet each semester, Respondent may adjust services to meet problems faced during the previous term. In addition, Respondent can also meet its obligations to reduce the costs of the educational program and to apply comparable benefits. *See* 34 C.F.R. § 361.53.

The primary danger caused by Respondent's new policy is that Respondent will not be able to provide timely services for the Spring semester. The process first requires Mr. H. to provide his grades at the end of the Fall semester, and then requires the parties to meet and

develop a new IPE in sufficient time to allow Respondent to pay for the services that it agrees to fund during the Spring semester.

The amended affidavit of Ms. Tolliver discusses how this policy will be implemented. She states that Ball State posts its grades each December 19, and that Mr. H. can access these grades in time for Respondent to develop a new IPE. Ball State posts its spring schedule each November 14. Amended Affidavit of Ms. Tolliver, no. 7.

Thus, while the danger of untimely provision of services is a general concern, Mr. H. has not experienced any disruption to his educational program to this point. This situation contrasts with that of *SJG v. DDS*, OAH Case No. 2011-DDS-00008 (Final Order, August 11, 2011), another decision issued by OAH. In *SJG*, this administrative court held that Respondent could not meet its obligations to provide RSA services to the individual by offering an IPE for the Fall semester only. In that case, SJG had been receiving RSA services for several years, so that the new policy represented a possible disruption of her educational program, and she also claimed that she had been locked out from registering for courses due to Respondent's refusal to obligate itself to pay for the spring semester. That factual scenario is not presented here.

3. Summary of IPE Analysis

I conclude that, to this point, Respondent has not violated any of Mr. H.'s rights under the RSA program by offering the IPE for the Fall 2011 Semester only:

(1) The Act is silent about the duration of the IPE;

(2) Respondent can comply with its obligations to provide RSA services, if it acts timely in developing the IPE for the Spring 2012 Semester; and

(3) Mr. H. has not experienced any disruption to his educational program, and has not identified any other harm caused by this policy.

The Act does make clear that Respondent must engage in an individualized process to support the vocational goal of each individual client. There may be situations in which it is inappropriate to enter into an IPE for one semester, based on an individual's specific needs. I am simply ruling that, in this one case, no harm has been caused. [3]

Finally, Mr. H. contends that Respondent is required to publish its new policy and to promulgate new regulations, after allowing for notice and comment. However, I conclude that, while Respondent's unpublished policy is not entitled to *Chevron* deference, there is no provision of law that requires the procedure urged by Mr. H. A similar argument was rejected by the District of Columbia Court of Appeals in *Takahashi*, 952 A.2d at 878, fn. 5.

D. Mr. H. Was Not Prejudiced by Lack of Notice

Respondent has conceded that it failed to provide adequate notice of its actions taken with regard to Mr. H.'s RSA benefits. Mr. H. seeks a declaratory order finding that Respondent violated his rights. Mr. H. does not allege that any harm resulted from the lack of notice. I agree with Respondent that there is no remedy I can order for this failure.

In *Zollicoffer v. D.C. Public Schools*, 735 A.2d 944, 946-47 (D.C. 1999), the District of Columbia Court of Appeals held that: (1) time limits for filing appeals of agency decisions are

[3] Respondent's reliance on the decision in *E.P. v. DDS*, OAH Case No. DS-P-08-102478 (Final Order, July 15, 2009), is misplaced. Respondent contends that it was required in *E.P.* to pay for RSA services in violation of its own regulations. Respondent omits that it refused to obey both an administrative review decision and a decision of OAH in that case, because Respondent disagreed with the holdings. Respondent is obligated to comply with lawful orders of OAH, even if it disagrees with them. Respondent has the right to seek timely review of decisions that it views as wrong.

jurisdictional, and failure of a party to file a timely hearing request divests the agency of jurisdiction to hear the matter; and (2) an administrative agency is charged with giving notice that is "reasonably calculated to apprise [a party] of the decision … and an opportunity to contest that decision."

Thus, if there were an issue here that Mr. H. had filed an untimely hearing request, the remedy for a defective notice of action would be to rule that the time limit for filing the request had not begun.

In this case, Mr. H. has received an opportunity to be heard, and so he has not been prejudiced by the lack of effective notice. His claim on this issue must be denied and dismissed.

E. Respondent May Provide Bus Transportation, but Must Include the Semester Break

For the following reasons, I conclude that Respondent must fund, as transportation services, the cost of bus fare to and from Muncie, Indiana, for the beginning of the school year, for the semester break when Mr. H. cannot remain in student housing, and for the end of the school year.

Mr. H. seeks transportation costs for air fare to and from Ball State (through Indianapolis Airport), not only at the beginning and end of the school year, but also during each school break.

Originally, I understood Respondent's position to be that it would pay for bus transportation to and from Muncie, Indiana, (beginning and end of the school year) as "transportation services." Ms. Tolliver's amended affidavit clarifies Respondent's proposal:

> Using the most cost-effective means, DDS/RSA can pay (one-way) for Petitioner to use a shuttle to transport him from Ball State University's campus to the airport

> in Indianapolis, IN. Then, transport Petitioner via a taxi from the airport to the bus station in Indianapolis, IN. From Indianapolis, he can catch a bus to Washington, D.C.

Amended Affidavit of Ms. Tolliver, no. 9.

Ms. Tolliver also states that this funding is for a single one-way trip at the end of the school year, in consideration of the fact that it is no longer practicable to provide the original one-way trip to Ball State University in August 2011. Ms. Tolliver contends that, if Mr. H. had attended the comparable program at Towson State University, Respondent would have paid for daily transportation to and from Towson State.

34 C.F.R. § 361.48(h) requires Respondent to provide transportation services as part of the vocational plan. Transportation services are defined:

> Transportation means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

34 C.F.R. § 361.5(b)(57); *see* 29 DCMR 199.1.

The question here is whether the requested transportation services are necessary to enable Mr. H. to participate in his vocational program.

I agree with Respondent in part, that 34 C.F.R. § 361.53 imposes a limitation on transportation benefits, and that Respondent is required to reduce the costs of the RSA services and to apply comparable benefits. For this reasons, I agree with Respondent that it is not required to fund air transportation, which is significantly more expensive than bus transportation. The comparable costs of these modes of transportation are set forth in J.H.'s letter to Ms. Olankawon, and in Ms. Tolliver's amended affidavit.

Nevertheless, I agree with Mr. H. in part, that Respondent must provide bus transportation to and from Ball State, at the beginning of the school year (which J.H. has apparently already paid and therefore must be reimbursed), at the end of the school year, and during the semester break. The reason this last expense is necessary is that Mr. H. cannot remain in student housing during this time. Since Respondent has agreed to fund Mr. H.'s student housing, it must also fund the related transportation expenses caused by the school's policy to not allow students in housing during the semester break.

Respondent contends that Mr. H. is not entitled to these transportation expenses because he has forsaken the chance to attend a comparable program at Towson State University. Respondent argues that Towson, Maryland is located in the Washington, D.C., Metropolitan area. I disagree.

Respondent's regulation, 29 DCMR 199.1, defines the "Washington, D.C., Metropolitan area" as, "areas in the District of Columbia, Maryland and Virginia accessible by public transportation. By definition this includes the principal cities of: Washington, DC; Arlington, VA; Reston, VA; Bethesda, MD; Frederick, MD; Rockville, MD; Gaithersburg, MD, Largo MD."

I take official notice of the fact that Towson, Maryland, is located north of Baltimore, Maryland, and is far from the locations described in the definition.[4] Respondent argues that it is possible to commute to Towson, Maryland, each day, but this is stretching the definition to an extreme. It is clear that the regulation is not intended to define all of the areas that are included

[4] Pursuant to D.C. Official Code § 2-509(b), any party may object to the taking of official notice by filing a motion for reconsideration on or before November 30, 3011.

in the Washington, D.C., Metropolitan area, but Towson is, if anything, in the Baltimore, Maryland, area. Baltimore is not listed in the list of principal cities.

Mr. H. has shown that he needs transportation to and from school, at the beginning, at the end, and during the semester break. I will order Respondent to provide these services, by bus, as part of the IPE.

Mr. H. can elect to travel by airplane, but Respondent is only obligated to provide bus transportation.

F. Summary of Conclusions

I conclude that there are no issues of material fact, and one or both parties are entitled to decisions in their respective favors as to all three remaining issues. *Kissi v. Hardesty*, 3 A.3d 1125, 1128 (D.C. 2010).

(1) IPE FOR ONE SEMESTER – Under the facts of this case, Respondent has <u>not</u> violated Mr. H.'s rights under the Act, by offering Mr. H. an IPE for only the Fall 2011 semester.

There is no provision in the Act that specifies the time period for an IPE to be issued. Respondent is not entitled to substantial deference to its new procedure for shortened time periods for issuing an IPE, primarily because the new procedure is not written and is not codified in Respondent's regulations or policy manual. *United States v. Mead Corp.*, 533 U.S. 218, 229-30 (2001). However, I must uphold the new procedure, as applied in this case, because it is possible for Respondent to comply with its mandates to provide services to Mr. H. under the Act. Although it is clear there is a potential for serious disruption of Mr. H.'s educational program, he

has not shown that Respondent's actions to this point have placed an undue hardship upon him. If Mr. H. faces harm, he may file another timely hearing request;

(2) LACK OF PROPER NOTICE - Although Respondent has failed to provide timely and adequate notice of its actions with regard to Mr. H.'s RSA application for the Fall 2011 Semester, Mr. H. was not prejudiced by this failure, and no remedy can be ordered; and

(3) TRANSPORTATION COSTS - Respondent has properly determined that it will provide bus fare, and not air fare, as transportation costs to Mr. H. to travel from his home to Ball State University, at the end of the 2011-12 school year. However, Respondent must also provide transportation costs for Mr. H. to go home and then return to Ball State University during the semester break, when Mr. H. cannot remain in his resident housing, and Respondent must reimburse the bus fare cost of Mr. H.'s travel to Ball State University in August 2011. 34 C.F.R. §§ 361.48(h) and 361.5(b)(57); 29 DCMR 199.1.

V. Order

Therefore, it is hereby, this _____ day of _____, 2011:

ORDERED, that Respondent's motion for summary adjudication is **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED, that Mr. H.'s motion for summary adjudication is **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED, that Mr. H.'s request to compel Respondent to offer an IPE to Mr. H. for a full year is **DISMISSED WITHOUT PREJUDICE.** If Mr. H. is harmed by Respondent's offer of an IPE for one semester, he may file another timely hearing request; and it is further

ORDERED, that Mr. H.'s request for relief due to defective notice of Respondent's decisions regarding his RSA services, is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that Mr. H.'s request for additional transportation services is **GRANTED IN PART AND DENIED IN PART.** Respondent shall provide bus transportation services to Mr. H., to and/or from his home in Washington, D.C., to and/or from Ball State University in Muncie, Indiana, at the beginning of the 2011-12 school year, during the Holiday semester break, and at the end of the 2011-12 school year; and it is further

ORDERED, that, within ten (10) days of the issuance date of this Order, Respondent shall convene an IPE meeting in accordance with this Order, and provide the services required by this Order, if Mr. H. signs the IPE; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.

/s/ November 23, 2011

_____

Paul B. Handy
Administrative Law Judge